IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 179/2002

Smt. Surekha H. Cundaikar,
major, service, resident of Torda,
Salvador do Mundo, Bardez, Goa. .... Appellant.

V/s.

Shri Hanumant V. Cundaikar,
major, service, resident of
Salvador do Mundo, Bardez, Goa. ..... Respondent.

Smt. A.A. Agni, Advocate for the appellant.

Shri Sudin M.S. Usgaonkar, Advocate for the respondent.

CORAM : P.V. HARDAS, J.

DATED : 9TH AUGUST, 2002.

ORAL ORDER :

This first appeal arises against the Judgment and Decree in Matrimonial Petition No.80/99/B dated 30.4.2002, passed by the Civil Judge, Sr. Division, Mapusa, allowing the petition for divorce filed by the present respondent, which was registered as Matrimonial Petition No.80/99/B. After hearing the learned Counsel for the appellant, this Court had issued notice to the respondent and by consent of both the parties, which is recorded by this Court in its Order dated 25.7.02, this appeal was set down for final decision at the stage of admission. Record and Proceeding from the learned trial Court has been called for. With the assistance of the learned Counsel for the parties, I have perused the

record and proceeding of the learned trial Court.

2. The appellant is the wife of the present respondent. Their marriage was solemnized in 1990 and from the wedlock, a son is born to them. The Matrimonial Petition came to be filed by the present respondent on the grounds of cruelty. A grievance made in the present appeal, which has necessitated taking up of the present appeal for final disposal at the stage of admission, is that no reasonable opportunity was given to the present appellant/original respondent to lead evidence before the learned trial Court. The grievance of the present appellant, which is canvassed before me by Mrs. A.A. Agni, the learned Counsel for the appellant, seems to be borne out from the perusal of the order sheet of the learned trial Court. It is an admitted fact that no reasonable opportunity was given to the appellant to lead evidence in defence of the allegations levelled by the present respondent/original petitioner.

3. Mr. Sudin Usgaonkar, the learned Counsel appearing for the respondent has brought to my notice the observations of the learned trial Court that the present appellant had sought adjournment nearly on 20 occasions. Thus, according to the learned Counsel

appearing for the present respondent/original petitioner, the reasonable opportunity had been availed off by the appellant and despite such opportunity, the appellant was negligent in not leading the evidence and examining the witnesses which the appellant sought. This observation of the learned trial Court is not borne out from the Roznama, a certified copy of which, is placed along with the Memo of Appeal.

4. Prima facie, I am inclined to remit the matter to the learned trial Court for giving an opportunity to the present appellant/original respondent to lead evidence and examine such other witnesses as the appellant desires and, therefore, I do not propose to examine the appeal on merits. Since the learned trial Court has decided the matrimonial petition on merits, the Judgment and Decree which is passed by the learned trial Court, deserves to be quashed and set aside.

5. In the result, therefore, First Appeal No.179/2002, is allowed. The Judgment and Decree impugned in the present First Appeal is, hereby, quashed and set aside and the Matrimonial Petition No.80/99/B is remitted to the Civil Judge, Sr. Division, Mapusa for giving an opportunity to the present appellant/original respondent to lead evidence and examine such other

witnesses as the appellant desires.

6. With these directions, the First Appeal is allowed. It is expected that the learned trial Judge who is assigned with the Hindu Matrimonial Petition, would expeditiously decide the same. No costs.

P.V. HARDAS, J.

ssm.